

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THE NEW YORK TIMES COMPANY,

Plaintiff,

v.

MICROSOFT CORPORATION, OPENAI,
INC., OPENAI LP, OPENAI GP, LLC,
OPENAI, LLC, OPENAI OPCO LLC, OPENAI
GLOBAL LLC, OAI CORPORATION, LLC,
and OPENAI HOLDINGS, LLC,

Defendants.

Civil Action No. 1:23-cv-11195 (SHS) (OTW)

DAILY NEWS, LP, et al.,

Plaintiffs,

v.

MICROSOFT CORPORATION, et al.,

Defendants.

Civil Action No. 1:24-cv-3285 (SHS) (OTW)

THE CENTER FOR INVESTIGATIVE
REPORTING, INC.,

Plaintiffs,

v.

OPENAI, INC., OPENAI GP, LLC, OPENAI,
LLC, OPENAI OPCO LLC, OPENAI GLOBAL
LLC, OAI CORPORATION, LLC, OPENAI
HOLDINGS, LLC, and MICROSOFT
CORPORATION,

Defendants.

Civil Action No. 1:24-cv-4872 (SHS) (OTW)

STIPULATION AND PROPOSED [ORDER] REGARDING PROTECTIVE ORDER

WHEREAS, the parties previously agreed that the Stipulated Protective Order entered in the case brought by The New York Daily News (ECF 129, No. 1:24-cv-03285-SHS-OTW) (“*Daily News Case*”) rather than the Stipulated Protective Order originally entered in the case brought The New York Times Company (ECF 127, No. 1:23-cv-11195-SHS-OTW) (“*The New York Times Case*”) will govern both the *Daily News Case* and *The New York Times Case* (ECF 303, No. 1:23-cv-11195-SHS-OTW).

WHEREAS, the parties now agree that the Stipulated Protective Order entered in the *Daily News Case* (ECF 129, No. 1:24-cv-03285-SHS-OTW) will also govern the case brought by The Center for Investigative Reporting, No. 1:23-cv-4872-SHS-OTW (“*CIR Case*”), rather than the Stipulated Protective Order originally entered in the *CIR Case* (ECF No. 129, No. 1:23-cv-4872-SHS-OTW).

WHEREAS, the parties have agreed that materials designated “HIGHLY CONFIDENTIAL – SOURCE CODE” shall be subject to the terms in the Stipulated Source Code Order filed at Dkt. 252 in *The New York Times* action, Case No. 23-cv-11195.

WHEREAS, Microsoft and the *Daily News* Plaintiffs have agreed to a modification to Paragraph 14 of the Stipulated Protective Order (ECF 129, No. 1:24-cv-03285-SHS-OTW), as set forth in more detail below.

WHEREAS, the parties have also reached agreement to modify the Stipulated Protective Order (ECF 129, No. 1:24-cv-03285-SHS-OTW) to include an additional “Outside Counsel Only” confidentiality designation, as set forth in more detail below.

THEREFORE, the Parties, through counsel, agree as follows:

1. All parties agree that the Stipulated Protective Order previously entered in the *Daily News Case* (ECF 129, No. 1:24-cv-03285-SHS-OTW) will govern these consolidated proceedings.

2. The parties request that the Court modify the Stipulated Protective Order (ECF 129, No. 1:24-cv-03285-SHS-OTW) to clarify that materials designated “HIGHLY CONFIDENTIAL – SOURCE CODE” shall be subject to the terms in the Stipulated Source Code Order filed at Dkt. 252 in *The New York Times* action, Case No. 23-cv-11195.

3. The parties request that the Court enter the following modifications to Paragraph 14 of the Stipulated Protective Order (ECF 129, No. 1:24-cv-03285-SHS-OTW), as reflected in the underlined, red text.

14. No person subject to this Protective Order other than the producing party shall disclose any of the Discovery Material designated by the producing party as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to any other person whomsoever, except to:
- (a) the recipient’s outside counsel of record in this action, as well as employees of said outside counsel of record to whom it is reasonably necessary to disclose the information for this litigation;
 - (b) Except as otherwise provided in subparagraphs (i) and (ii) or in this subparagraph (b), designated inhouse counsel of the recipient to whom disclosure is reasonably necessary for this litigation, provided such person has first executed an Undertaking to be Bound by Protective Order in the form annexed as an Exhibit hereto. Within 30 days of the entry of this Protective Order, a receiving party may designate by name, in writing, up to five (5) in-house attorneys who are permitted to view materials designated “HIGHLY CONFIDENTIAL–ATTORNEYS’ EYES ONLY,” provided that any attorneys so designated may not have a role through

which they could use such materials to engage in Competitive or Editorial Decision-Making.¹ In addition to the foregoing, and with respect to materials designated as HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY by Microsoft, the following individuals designated by The Times—A.G. Sulzberger, Meredith Levien, Diane Brayton, and Rebecca Grossman-Cohen, so long as (1) those documents do not relate to actual or potential licensing/data access agreements or negotiations regarding such agreements, and (2) each of these individuals executes an Undertaking to be Bound by Protective Order in the form annexed as an Exhibit hereto. In addition to the foregoing, and with respect to materials designated as HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY by Microsoft, the following individual designated by the *Daily News* Plaintiffs—Frank Pine, so long as (1) those documents do not relate to actual or potential licensing/data access agreements or negotiations regarding such agreements, and (2) Mr. Pine executes an Undertaking to be Bound by Protective Order in the form annexed as an Exhibit hereto.

¹ “Competitive or Editorial Decision-Making” means the action or process of making a business or journalistic decision or resolving a non-legal question relating to a competitor, potential competitor, customer, journalist, opinion writer, editor, video producer, audio producer, or distribution partner regarding contracts, marketing, pricing, product, service development or design, product, or service offering, research and development, mergers and acquisitions, or licensing, acquisition, funding, enforcement of intellectual property, publishing, writing, editing, broadcasting, or public speaking. It does not include legal advice provided in connection with litigation, potential litigation, or regulatory matters, nor does it include work performed as part of a trial team or to keep management advised on the progress or status of litigation, potential litigation, or regulatory matters.

- i. Agreements or draft agreements between a producing party and a third party, as well as documents reflecting negotiations or communications regarding such agreements, may be designated 'HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL'S EYES ONLY.' In-house counsel of the recipient shall not be permitted to access such information absent explicit written permission from the producing party and the relevant third party.
 - ii. For the avoidance of doubt, to the extent expert reports cite to materials designated 'HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL'S EYES ONLY,' in-house counsel may review those reports so long as such material is redacted. In-house counsel may not access documents designated 'Outside Counsel Only' even if such documents are cited in or appended to expert reports.
- (c) experts of the recipient to whom disclosure is reasonably necessary for this litigation, provided such persons have first executed an Undertaking to be Bound by Protective Order in the form annexed as an Exhibit hereto;
- (d) the court and its personnel; court reporters and their staff, professional jury or trial consultants, and professional vendors to whom disclosure is reasonably necessary for this litigation, provided such persons have first executed an Undertaking to be Bound by Protective Order in the form annexed as an Exhibit hereto; or

- (e) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

SO STIPULATED AND AGREED.

Dated: March 18, 2025

/s/ Ian Crosby

Ian Crosby (*admitted pro hac vice*)
Genevieve Vose Wallace (*admitted pro hac vice*)
Katherine M. Peaslee (*admitted pro hac vice*)
SUSMAN GODFREY L.L.P.
401 Union Street, Suite 3000
Seattle, WA 98101
Telephone: (206) 516-3880
Facsimile: (206) 516-3883
icrosby@susmangodfrey.com
gwallace@susmangodfrey.com
kpeaslee@susmangodfrey.com

Davida Brook (*admitted pro hac vice*)
Emily K. Cronin (*admitted pro hac vice*)
Ellie Dupler (*admitted pro hac vice*)
SUSMAN GODFREY L.L.P.
1900 Ave of the Stars, Suite 1400
Los Angeles, CA 90067
Telephone: (310) 789-3100
Facsimile: (310) 789-3150
dbrook@susmangodfrey.com
ecronin@susmangodfrey.com
edupler@susmangodfrey.com

Elisha Barron (5036850)
Zachary B. Savage (ZS2668)
Tamar Lusztig (5125174)
Alexander Frawley (5564539)
Eudokia Spanos (5021381)
SUSMAN GODFREY L.L.P.
One Manhattan West, 50th Floor
New York, NY 10001
Telephone: (212) 336-8330
Facsimile: (212) 336-8340
ebarron@susmangodfrey.com
zsavage@susmangodfrey.com
tlusztig@susmangodfrey.com
afrawley@susmangodfrey.com
espanos@susmangodfrey.com

Scarlett Collings (4985602)
SUSMAN GODFREY L.L.P.
1000 Louisiana, Suite 5100
Houston, TX 77002
Telephone: (713) 651-9366
Facsimile (713) 654-6666
scollings@susmangodfrey.com

Steven Lieberman (SL8687)
Jennifer B. Maisel (5096995)
Kristen J. Logan (*admitted pro hac vice*)
ROTHWELL, FIGG, ERNST & MANBECK, P.C.
901 New York Avenue, N.W., Suite 900 East
Washington, DC 20001
Telephone: (202) 783-6040
Facsimile: (202) 783 6031
slieberman@rothwellfigg.com
jmaisel@rothwellfigg.com
klogan@rothwellfigg.com

***Attorneys for Plaintiff
The New York Times Company***

/s/ Steven Lieberman
Steven Lieberman (SL8687)
Jennifer B. Maisel (5096995)
Robert Parker (*pro hac vice*)
Jenny L. Colgate (*pro hac vice*)
Mark Rawls (*pro hac vice*)
Kristen J. Logan (*pro hac vice*)
Bryan B. Thompson (6004147)
ROTHWELL, FIGG, ERNST & MANBECK, P.C.
901 New York Avenue, N.W., Suite 900 East
Washington, DC 20001
Telephone: (202) 783-6040
Facsimile: (202) 783-6031
slieberman@rothwellfigg.com
jmaisel@rothwellfigg.com
rparker@rothwellfigg.com
jcolgate@rothwellfigg.com
mrawls@rothwellfigg.com
klogan@rothwellfigg.com
bthompson@rothwellfigg.com

Jeffrey A. Lindenbaum (JL1971)
ROTHWELL, FIGG, ERNST & MANBECK, P.C.
3 Manhattanville Road, Suite 105
Purchase, New York 10577
Telephone: (202) 783-6040
Facsimile: (202) 783-6031
jlindenbaum@rothwellfigg.com

Attorneys for Plaintiffs
Daily News, LP; The Chicago Tribune Company, LLC; Orlando Sentinel Communications Company, LLC; Sun-Sentinel Company, LLC; San Jose Mercury-News, LLC; DP Media Network, LLC; ORB Publishing, LLC; and Northwest Publications, LLC

/s/ Matthew Topic
Jonathan Loevy (*pro hac vice*)
Michael Kanovitz (*pro hac vice*)
Lauren Carbajal (*pro hac vice*)
Stephen Stich Match (No. 5567854)
Matthew Topic (*pro hac vice*)
Thomas Kayes (*pro hac vice*)
Steven Art (*pro hac vice*)
Kyle Wallenberg (*pro hac vice*)

LOEVY & LOEVY
311 North Aberdeen, 3rd Floor
Chicago, IL 60607
312-243-5900 (p)
312-243-5902 (f)
jon@loevy.com
mike@loevy.com
carbajal@loevy.com
match@loevy.com
matt@loevy.com
steve@loevy.com
kayes@loevy.com
wallenberg@loevy.com

Attorneys for Plaintiff
The Center for Investigative Reporting, Inc.

/s/ Jared B. Briant

Jared B. Briant (admitted *pro hac vice*)
Kirstin L. Stoll-DeBell (admitted *pro hac vice*)
FAEGRE DRINKER BIDDLE & REATH LLP
1144 Fifteenth Street, Suite 3400
Denver, CO 80202
Telephone: (303) 607-3500
Facsimile: (303) 607-3600
Email: jared.briant@faegredrinker.com
Email: kirstin.stolldebell@faegredrinker.com

Annette L. Hurst (admitted *pro hac vice*)
ORRICK, HERRINGTON & SUTCLIFFE LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105-2669
Telephone: (415) 773-5700
Facsimile: (415) 773-5759
Email: ahurst@orrick.com

Christopher Cariello
Marc Shapiro
ORRICK, HERRINGTON & SUTCLIFFE LLP
51 West 52nd Street
New York: NY 10019
Telephone: (212) 506-3778
Facsimile: (212) 506-5151
Email: ccariello@orrick.com
mrshapiro@orrick.com

Sheryl Koval Garko (admitted *pro hac vice*)
Laura Brooks Najemy (admitted *pro hac vice*)
ORRICK, HERRINGTON & SUTCLIFFE LLP
222 Berkeley Street, Suite 2000
Boston, MA 02116
Telephone: (617) 880-1800
Facsimile: (617) 8801-1801
Email: sgarko@orrick.com
lnajemy@orrick.com

Carrie A. Beyer (admitted *pro hac vice*)
FAEGRE DRINKER BIDDLE & REATH LLP
320 South Canal Street, Suite 3300
Chicago, IL 60606-5707
Telephone: (312) 569-1000
Facsimile: (312) 569-3000
Email: carrie.beyer@faegredrinker.com

Jeffrey S. Jacobson
FAEGRE DRINKER BIDDLE & REATH LLP
1177 Avenue of the Americas, 41st Floor
New York, New York 10036
Telephone: (212) 248-3140
Facsimile: (212) 248-3141
Email: jeffrey.jacobson@faegredrinker.com

Elizabeth M.C. Scheibel (admitted *pro hac vice*)
FAEGRE DRINKER BIDDLE & REATH LLP
2200 Wells Fargo Center, 90 S. 7th Street
Minneapolis, MN 55402
Telephone: (612) 766-7000
Facsimile: (612) 766-1600
Email: elizabeth.scheibel@faegredrinker.com

Attorneys for Defendant Microsoft Corporation

KEKER, VAN NEST & PETERS LLP

Dated: March 18, 2025

By: /s/ Paven Malhotra

ROBERT A. VAN NEST (*pro hac vice*)
R. JAMES SLAUGHTER (*pro hac vice*)
PAVEN MALHOTRA - # 4409397
MICHELLE S. YBARRA (*pro hac vice*)
NICHOLAS S. GOLDBERG (*pro hac vice*)
THOMAS E. GORMAN (*pro hac vice*)
KATIE LYNN JOYCE (*pro hac vice*)
633 Battery Street
San Francisco, CA 94111-1809
Telephone: 415 391 5400
Facsimile: 415 397 7188
rvannest@keker.com
rslaughter@keker.com
pmalhotra@keker.com
mybarra@keker.com
ngoldberg@keker.com
tgorman@keker.com
kjoyce@keker.com

**Attorneys for Defendants OPENAI, INC.,
OPENAI LP, OPENAI GP, LLC,
OPENAI,
LLC, OPENAI OPCO LLC, OPENAI
GLOBAL LLC, OAI CORPORATION,
LLC, OPENAI HOLDINGS, LLC**

Dated: March 18, 2025

LATHAM & WATKINS LLP

By: /s/ Elana Nightingale Dawson

Andrew M. Gass (*pro hac vice*)

andrew.gass@lw.com

Joseph R. Wetzel

joseph.wetzel@lw.com

505 Montgomery Street, Suite 2000

San Francisco, CA 94111

Telephone: 415.391.0600

Sarang V. Damle

sy.damle@lw.com

Elana Nightingale Dawson (*pro hac vice*)

elana.nightingaledawson@law.com

Michael David (*pro hac vice*)

michael.david@law.com

555 Eleventh Street, NW, Suite 1000

Washington, D.C. 20004

Telephone: 202.637.2200

Allison L. Stillman

alli.stillman@lw.com

Rachel R. Blitzer

rachel.blitzer@lw.com

Herman Yue

herman.yue@lw.com

Luke A. Budiardjo

luke.budiardjo@lw.com

1271 Avenue of the Americas

New York, NY 10020

Telephone: 212.906.1200

Attorneys for OpenAI Defendants

Dated: March 18, 2025

MORRISON & FOERSTER LLP

By: /s/ Rose S. Lee

Joseph C. Gratz (*pro hac vice*)
jgratz@mofo.com
425 Market Street
San Francisco, CA 94105-2482
Telephone: 415.268.7000

Rose S. Lee (*pro hac vice*)
rose.lee@mofo.com
707 Wilshire Boulevard, Suite 6000
Los Angeles, California 90017-3543
Telephone: 213.892.5200

Eric K. Nikolaidis
enikolaides@mofo.com
Emily C. Wood
ewood@mofo.com
250 West 55th Street
New York, NY 10019-9601
Telephone: 212.468.8000

Carolyn Homer (*pro hac vice*)
chomer@mofo.com
2100 L Street, NW Suite 900
Washington, D.C. 20038
Telephone: 202.887.1500

Attorneys for OpenAI Defendants

SO ORDERED.

ONA T. WANG
United States Magistrate Judge

Dated: _____
New York, New York

ATTESTATION

Pursuant to S.D.N.Y. Electronic Case Filing Rule 8.5, I hereby attest that all other signatories listed, and on whose behalf the filing is submitted, concur in the content and have authorized this filing.

Dated: March 18, 2025

/s/ Ian Crosby
Ian Crosby (*admitted pro hac vice*)
SUSMAN GODFREY L.L.P.
401 Union Street, Suite 3000
Seattle, WA 98101
Telephone: (206) 516-3880
Facsimile: (206) 516-3883
icrosby@susmangodfrey.com

Attorney for Plaintiff
The New York Times Company